

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE STATE OF NEW MEXICO UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

02 OCT 11 PM 2:15

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

[Signature]
69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

Subfile No. CHGA-002-0048

UNOPPOSED MOTION FOR DEFAULT JUDGMENT

COMES NOW the plaintiff, State of New Mexico, *ex rel.*, State Engineer, by and through his attorneys, and moves the Court to enter its order granting default judgment against the following defendants:

SAM CHAVEZ
AURELIA CHAVEZ

CHGA-002-0048
CHGA-002-0048

and as grounds therefore plaintiff states:

1. Defendants Sam Chavez and Aurelia Chavez filed statements of water rights claims with the court on December 11, 2000 (Docket Nos. 6069, 6070). The claims of the defendants are subject to the prehearing order for the litigation of remaining disputed claims in Section 5 of the Rio Chama Stream System. *See* Order entered May 3, 2002 (Docket No. 6699).

2. The state has not offered to recognize the claims of the defendants in connection with the statement of claims filed on December 11, 2000, and the state has proposed that the court adjudicate their claim for water rights as "No Right." A copy of the color subfile map showing the land for which the defendants claim water rights is attached hereto as Exhibit A.

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3. On September 25, 2002, Defendants Sam and Aurelia Chavez failed to appear for the taking of their depositions after service by the state of proper notice for the taking of their depositions. *See* Exhibit B, Notice of Deposition and Request for Production to Sam Chavez, and Certificate of Nonappearance; Exhibit C, Notice of Deposition and Request for Production to Aurelia Chavez, and Certificate of Nonappearance.

4. Under Federal Rule of Civil Procedure 37(d), if a party fails to appear before the officer who is to take his or her deposition after being served with a proper notice, the court may make such orders in regard to the failure as are just, including rendering a default judgment against the disobedient party.

5. The State is credibly informed and believes that the Cordova-Martinez ditch association does not recognize any right of the Defendants to irrigate the land for which they claim water rights, nor have the defendants or their predecessors in interest ever contributed to the maintenance of the community ditch in connection with the land in question. *See* Exhibit D, Deposition of Antonio Serrano, September 25, 2002, pp. 4, 5, 16, 20, 23, 26, 31, 34, 35, 52.


6. The State is credibly informed and believes that there are no headgates or turn-outs located on the Cordova-Martinez ditch to irrigate the land for which the defendants claim water rights. *See* Exhibit D, Deposition of Antonio Serrano, September 25, 2002, pp. 38.

7. The State is credibly informed and believes that the land in question has not been irrigated from the Cordova-Martinez ditch for at least the last 20 years. *See* Exhibit D, Deposition of Antonio Serrano, September 25, 2002, pp. 37.

8. Counsel for the state has contacted the defendants to inquire if this motion is opposed, and the defendants DO NOT oppose the motion.


WHEREFORE, the plaintiff State of New Mexico requests the Court to enter its order granting default judgment against the above-named defendants and adjudicate the water rights claims of the defendants as "No Right."

Respectfully submitted,


EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I certify that the foregoing Unopposed Motion for Default Judgment was mailed to the following persons on October 11, 2002.


Edward G. Newville

Sam Chavez
Aurelia Chavez
P.O. Box 115
Gallina, NM 87017

999 18th St., Suite 945
Denver, CO 80202

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 87504-2384

Mary E. Humphrey, Esq.
P.O. 1574
El Prado, N.M. 87529-1574

Darcy S. Bushnell, Esq.
Adjudication Staff Attorney
USDC-DCNM
333 Lomas Blvd. NW, Suite 270
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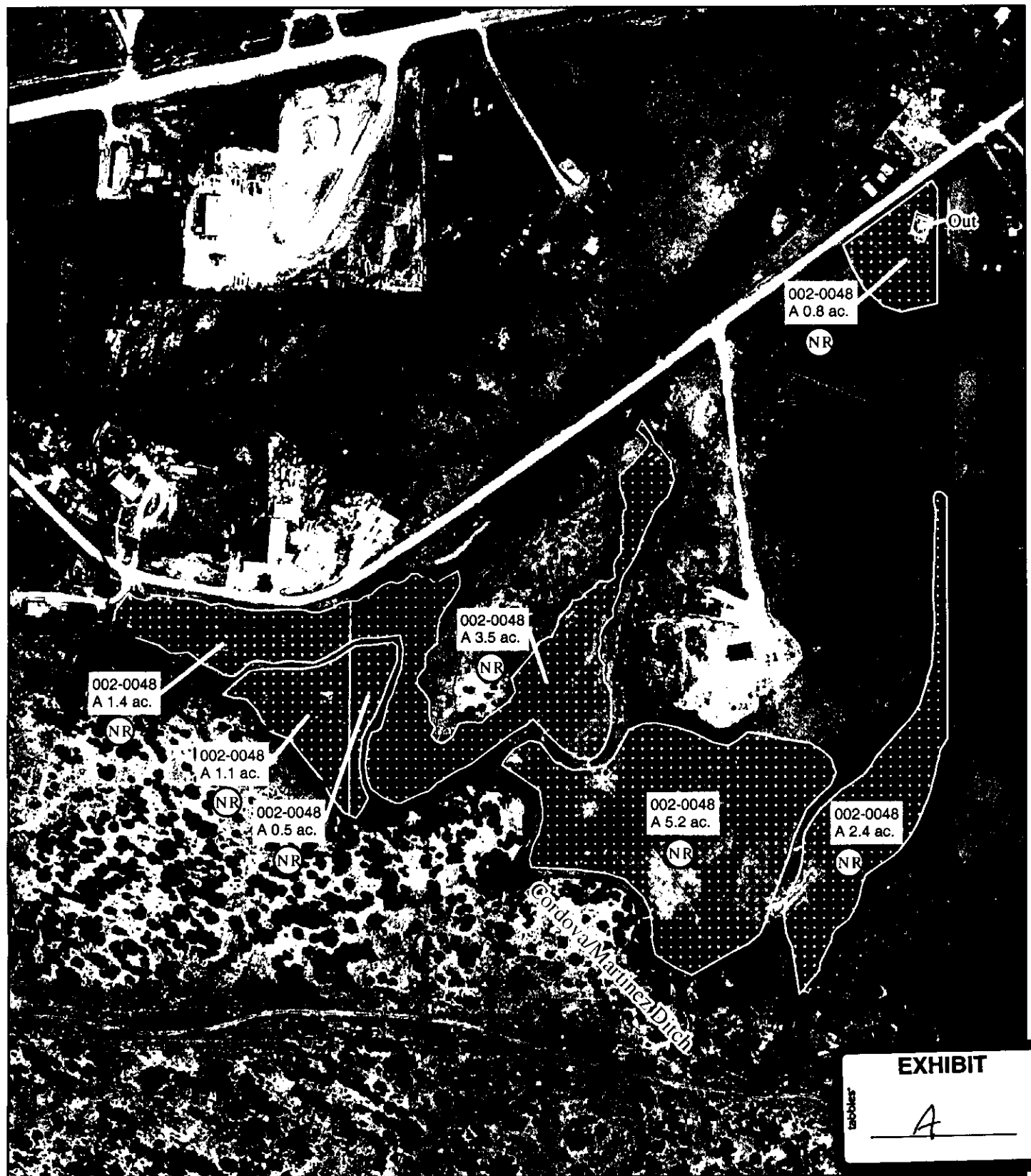
John W. Utton, Esq.
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Albuquerque, NM 87103-0271

Karla McCall, Data Manager.
1315 Sagebrush Dr. SW
Los Lunas, NM 87031

Fred J. Waltz, Esq.
P.O. Box 6390
Taos, NM 87571

Ronald Boyd, Esq.
208 Griffin Street
Santa Fe, NM 87501

Bradley S. Bridgewater, Esq.
David W. Gehlert, Esq.
USDOJ-ENRD



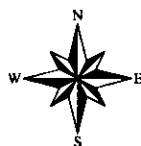
EXHIBIT

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A

LEGEND

- | | |
|--------------------------|--------------------|
| Irrigated Tract Boundary | Point of Diversion |
| No Right Tract Boundary | Fallow |
| Seeped Area | No Right |
| Operable Ditch | |
| Inoperable Ditch | |
| Stock Ponds / Reservoir | |



1 inch = 300 feet

0 50 100 200 300

Feet

STATE OF NEW MEXICO
Office of the State Engineer
Thomas C. Turney, State Engineer

Rio Chama Hydrographic Survey
RIO GALLINA SECTION

Subfile Number
CHGA 002-0048
Cordova/Martinez Ditch
AMENDED
August 30, 2002



IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

NOTICE OF DEPOSITION
AND REQUEST FOR PRODUCTION

TO: Sam Chavez
P.O. Box 115
Gallina, NM 87017

PLEASE TAKE NOTICE that the plaintiff State of New Mexico *ex rel.* State Engineer will take the deposition of defendant SAM CHAVEZ on Wednesday September 25, 2002, beginning at 1:30 p.m. in room 303 at the State Capital Building, Santa Fe, New Mexico. Testimony will be taken by stenographic means on the basis for the water right claims of Sam Chavez and Aurelia Chavez in the Rio Gallina section of the Rio Chama Stream System.

The deposition will be taken pursuant to Federal Rule of Civil Procedure 30(a). Pursuant to Federal Rule of Civil Procedure 34, the defendant Sam Chavez is requested to produce at the time of his deposition the following documents:

1. documents identified in Defendants Sam and Aurelia Chavez Initial Disclosures to the State of New Mexico mailed June 15, 2002.
2. all canceled checks, receipts or other records showing any payments made to the


EXHIBIT

B

Cordova-Martinez ditch association for ditch assessments in connection with land owned by defendants Sam Chavez and Aurelia Chavez.

3. all irrigation schedules, present and past, for the Cordova-Martinez ditch association in possession, custody or control of the defendant.
4. In addition to the items identified above, any other documents showing or tending to show that defendants Sam Chavez and Aurelia Chavez are , or ever have been, members of the Cordova-Chavez ditch association.
5. Any other documents supporting the water right claims of Sam Chavez and Aurelia Chavez.

DATED: August 28, 2002


EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I certify that a copy of the above notice was mailed to the following persons on August 28, 2002.


Edward G. Newville

Sam Chavez
Aurelia Chavez
P.O. Box 115

Gallina, NM 87107

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 87504-2384

Darcy S. Bushnell, Esq.
Adjudication Staff Attorney
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1315 Sagebrush Drive., S.W.
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PAUL BACA

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel,
State Engineer,

Plaintiff,

No.: 69cv07941 JEC-ACE

vs.

RAMON ARAGON,

Defendant.

CERTIFICATE OF NONAPPEARANCE

THIS IS TO CERTIFY that the Deposition of SAM CHAVEZ was scheduled to be taken on the 25th day of September 2002, at the Capital Building, Room 305, Santa Fe, New Mexico at the hour of 1:30 p.m.;

THAT EDWARD G. NEWVILLE, attorney for the Plaintiff; MARY HUMPHREY, attorney for the Cordova-Martinez Ditch, and the Court Reporter appeared at that time and place, but the witness and/or his attorney failed to appear.

Dated this 25th day of September 2002.



IRENE DELGADO, NM CCR 253

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

v.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 JEC-ACE

RIO CHAMA STREAM SYSTEM
Rio Gallina, Section 5

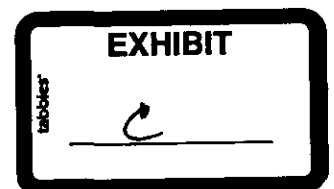
**NOTICE OF DEPOSITION
AND REQUEST FOR PRODUCTION**

TO: Aurelia Chavez
P.O. Box 115
Gallina, NM 87017

PLEASE TAKE NOTICE that the plaintiff State of New Mexico *ex rel.* State Engineer will take the deposition of defendant AURELIA CHAVEZ on Wednesday September 25, 2002, immediately following the deposition of Sam Chavez, and beginning approximately at 3:30 p.m., in room 303 at the State Capital Building, Santa Fe, New Mexico. Testimony will be taken by stenographic means on the basis for the water right claims of Sam Chavez and Aurelia Chavez in the Rio Gallina section of the Rio Chama Stream System.


The deposition will be taken pursuant to Federal Rule of Civil Procedure 30(a). Pursuant to Federal Rule of Civil Procedure 34, the defendant Aurelia Chavez is requested to produce at the time of her deposition the following documents:

1. documents identified in Defendants Sam and Aurelia Chavez Initial Disclosures to the State of New Mexico mailed June 15, 2002.



2. all canceled checks, receipts or other records showing any payments made to the Cordova-Martinez ditch association for ditch assessments in connection with land owned by defendants Sam Chavez and Aurelia Chavez.
3. all irrigation schedules, present and past, for the Cordova-Martinez ditch association in possession, custody or control of the defendant.
4. In addition to the items identified above, any other documents showing or tending to show that defendants Sam Chavez and Aurelia Chavez are , or ever have been, members of the Cordova-Chavez ditch association.
5. Any other documents supporting the water right claims of Sam Chavez and Aurelia Chavez.

DATED: August 28, 2002


EDWARD G. NEWVILLE
Special Assistant Attorney General
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

CERTIFICATE OF SERVICE

I certify that a copy of the above notice was mailed to the following persons on August 28, 2002.


Edward G. Newville

Sam Chavez

Aurelia Chavez
P.O. Box 115
Gallina, NM 87107

Special Master Vickie L. Gabin
USDC-DCNM
P.O. Box 2384
Santa Fe, NM 87504-2384

Darcy S. Bushnell, Esq.
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Mary E. Humphrey, Esq.
P.O. 1574
El Prado, N.M. 87529-1574

John W. Utton, Esq.
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Fred J. Waltz, Esq.
P.O. Box 6390
Taos, NM 87571

Ronald Boyd, Esq.
208 Griffin Street
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PAUL BACA

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel,
State Engineer,

Plaintiff,

vs.

RAMON ARAGON,

Defendant.


No.: 69cv07941 JEC-ACE

CERTIFICATE OF NONAPPEARANCE

THIS IS TO CERTIFY that the Deposition of
AURELIA CHAVEZ was scheduled to be taken on the 25th
day of September 2002, at the Capital Building, Room
305, Santa Fe, New Mexico, immediately following the
deposition of Sam Chavez and beginning approximately at
the hour of 3:30 p.m.;

THAT EDWARD G. NEWVILLE, attorney for the
Plaintiff; MARY HUMPHREY, attorney for the
Cordova-Martinez Ditch, and the Court Reporter appeared
at that time and place, but the witness and/or her
attorney failed to appear.

Dated this 25th day of September 2002.


IRENE DELGADO, NM CCR 253

IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel,
State Engineer,

Plaintiff,

vs.

No.: 69cv07941 JEC-ACE

RAMON ARAGON, et al,

Defendants.

DEPOSITION OF ANTONIO SERRANO

September 25, 2002

9:00 a.m.

State Capital Building, Room 303

Santa Fe, New Mexico

PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE,
this deposition was:

TAKEN BY: EDWARD G. NEWVILLE, ESQ.
ATTORNEY FOR THE PLAINTIFF

REPORTED BY: Irene Delgado, NM CCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102

EXHIBIT

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1 very slowly. If you don't understand me, please ask me
2 to explain the question, and we will go from there, and
3 I will try to cover this ground pretty slowly.

4 A. Okay.

5 Q. Would you state your name for the record?

6 A. Antonio Serrano.

7 Q. And what is the address where you live?

8 A. P. O. Box 211 Gallina.

9 Q. How long have you lived at this address?

10 A. About 22 years.

11 Q. 23 years. Mr. Serrano, what is your age at
12 this time?

13 A. 46.

14 Q. 43, okay. How long have you lived in
15 Gallina?

16 A. 22 years.

17 Q. 23 years. Where were you born?

18 MS. HUMPHREY: This is not correct --

19 A. In Canones.

20 MS. HUMPHREY: Would you restate how
21 many years you have lived there.

22 THE WITNESS: 22 years.

23 MS. HUMPHREY: I think you might speak
24 up a little so Ed can hear you.

25 Q. I talk very softly, too, and my hearing is

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PAUL BACA

1 also less than perfect, so I might have to ask that you
2 repeat some things.

3 A. Okay.

4 Q. How many years have you lived in Gallina?

5 A. 22.

6 Q. 22 years. And where were you born?

7 A. Canones.

8 Q. In Canones?

9 A. Uh-huh.

10 Q. So you moved to Gallina 22 years ago?

11 A. Uh-huh.

12 Q. And you lived there ever since?

13 A. Yes.

14 Q. Okay. I understand that you have been
15 designated to testify on behalf of the Cordova-Martinez
16 Ditch in this matter.

17 A. Yes.

18 Q. Are you an officer of the Cordova-Martinez
19 Ditch?

20 A. I'm the mayordomo. That's what they call it
21 up there -- not now, but I used to be for two years.

22 Q. Are you an officer right now at this time?

23 A. No, I'm not.

24 Q. You have been the mayordomo in the past?

25 A. Just for two years.

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- 1 Q. Backhoe work?
- 2 A. Yeah.
- 3 Q. Done this spring 2000?
- 4 A. Uh-huh.
- 5 Q. I don't see the name Sam or Aurelia Chavez on
- 6 this list.
- 7 A. Sam or who?
- 8 Q. Sam Chavez.
- 9 A. Yeah. No, he's not here.
- 10 Q. And so he's not here?
- 11 A. (Nodding.)
- 12 Q. So he didn't contribute to the backhoe
- 13 work --
- 14 A. No.
- 15 Q. -- on this year? Did anyone contribute for
- 16 him?
- 17 A. No, because he didn't have a property then.
- 18 Q. Okay.
- 19 A. The only properties that -- that's his dad.
- 20 That's David.
- 21 Q. His father is David Chavez?
- 22 A. Chavez.
- 23 Q. And it's listed here?
- 24 A. Uh-huh.
- 25 Q. Okay. Where is David Chavez' land? Do

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20

1 A. It's another backhoe. I guess apparently two
2 of them because we paid to Albert and Julian.

3 Q. Do you know if this was done in the same year
4 or a different year?

5 A. I don't remember. It has to have been 2000
6 or 2001.

7 Q. 2000 or 2001?

8 A. Yeah, because I didn't even put the date on
9 this one.

10 Q. Okay. Does Sam Chavez' name appear on this
11 document?

12 A. No. Only his dad's.

13 Q. Did Sam Chavez contribute towards the payment
14 of the ditch work that year as shown in that document?

15 A. No.

16 MR. NEWVILLE: Okay. I would like to
17 make this Exhibit B and make three copies.

18 (Exhibit B marked for identification.)

19 Q. Okay. I will pass you some additional
20 papers. These are three pages that are stapled
21 together, and can you tell me what they are, identify
22 them?

23 A. One of them was for a dozer and for a
24 backhoe -- both of them, I guess, on both of them
25 because this one Julian Garcia had a dozer; we had him

1 A. Yeah.

2 Q. Can you tell me what this is? And we will
3 call this --

4 A. For backhoe work, too.

5 Q. We will make this exhibit D.

6 (Exhibit D marked for identification.)

7 Q. And this is for additional backhoe work in
8 the year 2000?

9 A. Uh-huh.

10 Q. And it lists, again, all of the irrigators?

11 A. Yes.

12 Q. Does it list the same irrigators as it did in
13 2001?

14 A. Yeah.

15 Q. Okay. Is Sam Chavez on this list?

16 A. No.

17 Q. Did he pay you any other way that year for
18 any of the costs of the backhoe work?

19 A. No.

20 Q. The only people who paid you --

21 A. If he paid me, he paid me in his dad's -- for
22 his dad's property.

23 Q. He may have paid you for his dad's property?

24 A. Yeah, uh-huh.

25 Q. Does it list his dad's name on that sheet?

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1 A. No.

2 Q. -- from the ditch?

3 A. No. Only those two persons.

4 Q. Only those two persons?

5 A. Uh-huh.

6 Q. Are there days on that schedule when one
7 person has the right to use all the water and no one
8 else along the ditch should be irrigating --

9 A. No.

10 Q. -- on that day? They don't have the right to
11 use the water on that day?

12 A. (Nodding.)

13 Q. Okay. Is Sam Chavez on this irrigation
14 schedule for 2001?

15 A. No.

16 Q. Okay. I notice that on the schedule that it
17 goes from June to August, and his name is penciled in
18 next to David Chavez. Can you tell me what that might
19 mean?

20 A. That means that -- well, he's going to take
21 his dad's water or he can use it, you know, because
22 that belongs to his dad.

23 Q. Okay. So he is using his -- his dad's water?

24 A. Yeah. Well, his dad is already old, so he is
25 the one that is using the water, so --

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1 the list.

2 Q. So the record is clear, we have one addition,
3 and what year is it, Mr. Serrano?

4 A. 1992.

5 Q. Mr. Serrano, does the ditch have any list of
6 its members?

7 A. Only these ones.

8 Q. Only the irrigation schedule?

9 A. Yeah.

10 Q. Does the irrigation schedule -- it represents
11 some members of your district association.

12 A. Yes.

13 Q. In your opinion, does it represent the people
14 that -- that have the right to use water from the
15 ditch?

16 A. Yeah. Only these ones.

17 Q. Okay. When you were mayordomo, if persons
18 that were not on this schedule cut the ditch and began
19 to use water, would you have done anything about that?

20 A. We would have gone in and shut it off, yeah,
21 because, if they weren't on the schedule, they weren't
22 able to use it.

23 Q. If they weren't on the schedule --

24 A. No.

25 Q. -- they weren't supposed to be using the

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1 so that everybody can see it.

2 A. (Indicating.)

3 MR. NEWVILLE: We will make this an
4 exhibit.

5 (Exhibit G marked for identification.)

6 Q. Do you know how long Sam Chavez has owned
7 this land?

8 A. Maybe -- I don't even think maybe a year, but
9 I doubt it. He just bought it.

10 Q. How did he acquire the land?

11 A. I guess he got it from the bank, I guess,
12 because the bank had it. That's what I knew.

13 Q. So is --

14 A. When you say.

15 Q. Your understanding is that it was purchased
16 from a bank, perhaps in a foreclosure sale?

17 A. Probably, because Sam's sister had that --
18 owned that property, and I don't know what happened.

19 Q. Who used to own the property?

20 A. Sam's sister, Bernice Gomez.

21 Q. Bernice Gomez? Do you think Sam acquired it
22 sometime within the last year?

23 A. Like around there. I would think so.

24 Q. Okay. Well, we have been talking about Sam
25 Chavez, and I didn't realize that he has acquired the

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1 property so recently. I need to ask you a series of
2 questions about Bernice Gomez. How long did she own
3 the property, do you know?

4 A. No, I sure don't know.

5 Q. Was she related to Sam Chavez?

6 A. Bernice?

7 Q. Bernice.

8 A. Yeah.

9 Q. What was her relation?

10 A. Bernice was the sister.

11 Q. In all of the documents that we have looked
12 at that had to do with payment for assessments, you
13 know, the backhoe work or the irrigation schedule, is
14 Bernice Gomez listed on any of those documents?

15 A. No.

16 Q. She was not on the irrigation schedule?

17 A. No.

18 Q. Did she come to the meetings in the spring
19 that were organized for the cleaning of the ditch?

20 A. No.

21 Q. Did she pay any of the costs of the backhoe
22 work --

23 A. No.

24 Q. -- that you're aware of? Okay. And you
25 lived in Gallina for 22 years. Do you live anywhere

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PAUL BACA

1 A. One time.

2 Q. And how many cows were out there?

3 A. I don't remember. There were like 30 of
4 them.

5 Q. 30?

6 A. Uh-huh.

7 Q. Okay. And they kept horses there, one or two
8 horses?

9 A. Yeah. I think they still have two horses
10 there.

11 Q. Okay. Was the land ever cut for alfalfa or
12 hay?

13 A. No.

14 Q. Okay. To the best of your knowledge, was the
15 land ever irrigated during the last 20 years?

16 A. No.

17 Q. Okay. How -- how certain are you of your
18 statement that the land has not been irrigated?

19 Are you very positive of that?

20 A. Yeah.

21 Q. Okay. Can you tell me why?

22 A. Because they've never -- like on the back of
23 the ditch, they've never -- it's still the same since
24 we lived -- there's only one, where you open the water,
25 that belonged to David and Marino. That's the only

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PAUL BACA

1 one.

2 Q. Okay.

3 A. And there's water that seeps through under.

4 Q. Okay. So there's -- you have walked the
5 ditch many times, and there is no diversion from the
6 main ditch --

7 A. No.

8 Q. -- to irrigate this property?

9 A. No.

10 Q. And there hasn't been in the last 20 years;
11 is that correct?

12 A. That's correct.

13 Q. Okay. Now, this ditch runs along the
14 boundary of Sam Chavez' land; is that correct?

15 A. Yeah.

16 Q. Up close to the forest?

17 A. Yeah.

18 Q. Okay. Now, have you looked at the main, the
19 main map -- well, maybe --

20 A. Here, and --

21 Q. And I'm pointing to the yellow tracts and all
22 labeled 002-0048. Now, a little to the east there's
23 some long tracts marked in green which, on this State
24 map, that is irrigated land. Do you know who owns this
25 property here? Are you familiar with this?

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PAUL BACA

1 Q. Okay. Has Sam Chavez requested to become a
2 member of your ditch association?

3 A. No. Not -- well, since he just got that
4 property now, no.

5 Q. No?

6 A. No.

7 Q. Did Bernice Gomez, to your knowledge, ever
8 request to be a member of the ditch association?

9 A. No.

10 Q. Did Bernice Gomez ever make a request to use
11 the water from the ditch?

12 A. No.

13 Q. And Sam Chavez, when you were mayordomo or
14 since he acquired the property, to your knowledge --

15 A. No.

16 Q. -- they never made a request, either?

17 A. Huh-uh.

18 Q. Okay. I have no further questions. Thank
19 you very much.

20 A. Okay.

21 MS. HUMPHREY: I have just a couple of
22 things to clarify.

23 MR. NEWVILLE: Sure.
24
25